

Heenan Blaikie

Our Reference No. 031040-0043

Of Counsel

The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., Q.C., FRSC (1964 - 2000)
 The Right Honourable Jean Chrétien, P.C., C.C., O.M., Q.C.
 The Honourable Donald J. Johnston, P.C., O.C., Q.C.
 Pierre Marc Johnson, G.O.Q., FRSC
 The Honourable Michel Bastarache
 The Honourable René Dussault, FRSC
 The Honourable John W. Morden
 Peter M. Blaikie, Q.C.
 André Bureau, O.C.

February 26, 2010

Via Facsimile

Mr. Peter Suchanek
 Regional Director and Registrar
 CANADA INDUSTRIAL RELATIONS BOARD
 Ontario Region
 5300 – 1 Front Street West
 Toronto, Ontario
 M5J 2X7

Dear Mr. Suchanek:

Re: Request for Declaratory Opinion

Introduction

1. This is an application by FedEx Ground Package System Ltd. to the Canada Industrial Relations Board (the “Board”) for a declaratory opinion under section 15.1(2) of the *Canada Labour Code* (“Code”). FedEx Ground Package System Ltd. seeks the Board’s declaratory opinion confirming the following:

A wage rate increase for Package Handlers employed by FedEx Ground Package System Ltd. at selected facilities in Canada, which was approved prior to the commencement of organizing activity by the Canadian Council of Teamsters (Teamsters), is lawful under the *Canada Labour Code*.

2. FedEx Ground Package System Ltd.’s decision to implement wage rate increases for Package Handlers is part of an established compensation review plan developed by FedEx Ground Package Systems Ltd. and its parent company

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FedEx Ground Package Systems Inc. for North American-wide application. FedEx Ground Package Systems Inc. wholly owns FedEx Ground Package Systems Ltd. and operates the U.S. business. For the purposes of this application, we will simply use the reference "FXG," which at times may mean one or the other entity.

3. The wage rate increase to be implemented in 2010 was approved in the spring of 2009. Pursuant to this plan, FXG Package Handlers at a number of U.S. facilities will receive wage rate increases. This same plan includes wage rate increases for Package Handlers employed at certain facilities in Canada.
4. On September 14, 2009, the Teamsters announced that the Union was launching a campaign aimed at becoming certified to represent FXG employees across Canada.
5. During the organizing campaign, FXG has lawfully exercised its rights as an employer under the *Code* and the Canadian *Charter of Rights and Freedoms*.
6. FXG had finalized and approved a plan to implement Package Handler wage rate increases across North America before September 14, 2009, and before there was any sign of a Teamsters' campaign. FXG will proceed with wage rate increases for Package Handlers in the U.S. effective February 28, 2010. However, FXG will defer the implementation of wage rate increases contemplated for Canada until May 1, 2010 to give the Board time to decide this matter or such earlier date in consultation with the Board.

Reason for the Application

7. As the Board knows from many other proceedings, employers at this time are facing competitive and financial challenges.
8. FXG, as with many other employers, regularly reviews compensation at all levels of the organization. FXG and other prudent employers must ensure that its labour rates and salaries remain competitive in the labour market, while at the same time ensuring that the cost of its products and services also remain competitive.
9. As will be explained in greater detail, FXG budgeted in the spring of 2009 to increase Package Handler wage rates at a number of its locations in the U.S. and Canada based on competitive and proprietary market studies. The plan to increase Package Handler wage rates was formulated prior to and is completely unrelated to Teamsters organizing activity. The increases in the U.S. will be implemented, effective February 28, 2010. The Teamsters have been actively and publicly campaigning to organize FXG in the U.S.
10. The Teamsters' public campaign in Canada has been in progress for approximately five and a half months. To date, Teamsters have not sought certification in any location based on membership cards or through a certification vote under the Code. However, the Teamsters have filed a series of unfair labour practice complaints. FXG has denied the allegations in those complaints. FXG is prepared to defend against these allegations whenever the complaints are scheduled for hearing.
11. FXG respectfully submits that the *Code* does not require an employer to suspend legitimate compensation increases while an organizing campaign of uncertain

duration is in progress. This would create conditions that do not accurately reflect the employer's compensation practice. This also may actually give an unfair advantage to a union organizing campaign that is not intended by the *Code* and that could operate to the detriment of employees.

12. FXG believes it is entitled to proceed with the increase without having to confront and overcome unfounded unfair labour practice accusations. Nevertheless, as described in paragraph 6 above, FXG is deferring the Package Handler wage rate increases in Canada and by this application is seeking a declaratory opinion under section 15.1(2) of the *Code*.

The Decision to Increase Package Handler Wage Rates Across North America

13. FXG is a leading small package delivery company with operations throughout the U.S. and Canada. It has 520 facilities, 21 of which are located in Canada. Out of the company's total population of 36,000 package handlers, only 500 are employed in Canada.
14. In March 2009, FXG finalized a business plan to increase the pay schedules for Package Handlers at selected facilities in fiscal year 2010, with a scheduled implementation date of December 1, 2009. This business plan was approved in July 2009.
15. In or around November of 2009, a decision was made to proceed with the budgeted Package Handler pay increases in the U.S. and Canada, but not on the anticipated date of December 1, 2009. This decision was based on economic conditions and uncertainty over the financial obligations arising from potential federal health care reform legislation in the U.S.

16. In or around late January 2010, FXG finalized the implementation of the wage rate increase effective February 28, 2010.
17. FXG confirms that the decision to increase the Package Handlers' wage rates in the U.S. and Canada effective February 28, 2010 is unrelated to the Teamsters' organizing campaign. The increase is part of a compensation review plan that began and was finalized before the Teamsters commenced organizing activity at FXG. Furthermore, the increase does not affect employees covered by the Teamsters' certification application.
18. FXG asks the Board to confirm FXG's right to implement the wage rate increase in Canada. The U.S. wage rate adjustments will be implemented on February 28, 2010.
19. While FXG's request for a declaratory opinion on this issue is not an ordinary request, the Teamsters conduct during the course of its campaign to unionize FXG in Canada has been extraordinary. FXG justifiably expects that the Teamsters will challenge FXG's wage increase before the Board and mischaracterize to employees and to the public FXG's lawful intentions. FXG states that the Board therefore has an interest in providing a declaratory opinion in these circumstances.

The Request to the Board under Section 15.1(2)

20. FXG seeks a declaratory opinion under section 15.1(2) of the *Code* confirming the following:

A wage rate increase for Package Handlers employed by FedEx Ground Package System Ltd. at selected facilities in Canada, which was approved prior to the commencement of organizing

activity by the Canadian Council of Teamsters (Teamsters), is lawful under the *Canada Labour Code*.

21. FXG respectfully requests the Board to convene a hearing as soon as possible to hear and determine this request for declaratory opinion. FXG is available to provide the Board with any further relevant information related to this application that the Board may require, subject to appropriate confidentiality protections.
22. As mentioned in paragraph 6 above, FXG will defer the implementation of wage rate increases contemplated for Canada with the expectation that the Board would decide this matter prior to May 1, 2010.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

Heenan Blaikie LLP



J. Timothy Lawson
JTL/MG/lm/ir

c. Client (*via email*)
Stéphane Lacoste, Canada Council of Teamsters (*via facsimile*)

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DATE **February 26, 2010**

OUR REFERENCE **031040-0043**

SUBJECT

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